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IN THE

Supreme Court of the United States

October Term, 1960.

No. 489

MONOLITH PORTLAND MIDWEST COMPANY, a corporation,

Appellant,

vs.

RECONSTRUCTION FINANCE CORPORATION, a corporation,

Appellee.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

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vs.

RECONSTRUCTION FINANCE CORPORATION, a corporation,

Appellee.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit in the above-entitled case.

Opinions Below.

The District Court did not file an opinion. The opinion of the Court of Appeals [R. 418, Appendix "A", *infra* pp. 1-14] has not yet been reported.

Jurisdiction.

The judgment of the Court of Appeals was entered on July 27, 1960. [R. 430.] Rehearing was denied without opinion on August 30, 1960. [R. 429.] The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254(1).

Question Presented.

Whether an action by a World War II contractor against the Reconstruction Finance Corporation for the "fair compensation" pledged by the Contract Settlement Act of 1944 for the premature cancellation of such contracts abated under the rule of *Defense Supplies Corporation v. Lawrence Warehouse Co.*, 336 U. S. 631, for non-substitution of R. F. C.'s successor as a defendant; where, unlike the Joint Resolution considered in *Defense Supplies Corporation*, which both dissolved the D. S. C. and concurrently required substitution, the Reorganization Plan No. 1 of 1957, which "abolished" the R. F. C., contained no such substitution requirement and the abatement is based on the incorporation by implication of a prior uncodified provision requiring substitution following "dissolution" in the Reconstruction Finance Corporation Liquidation Act of 1953, a statute enumerating certain conditions precedent to "dissolution," some of which never occurred; or, whether the incorporation by implication of such prior, discrete statute, the non-occurrence of several of the very conditions Congress specified as precedent to "dissolution," the facts tending to show an estoppel against the Government, the character of an action for "fair compensation" for contracts terminated at the Government's convenience, and the existence of California and District of Columbia statutes providing for non-abatement of pending actions against "dissolved" corporations, preclude such abatement, in light of the notice element of due process under the Fifth Amendment.

Statutes Involved.

The pertinent provisions of the following statutes are set out in chronological order in Appendix "B", *infra*, pages 16-31:

1. *The Reconstruction Finance Corporation Act of* 1932, as amended, c. 166, 61 Stat. 202, 208, c. 334 §3, 62 Stat. 362, 15 U. S. C. A. §§603, 608, 609 (Appendix "B", p. 16);
2. *Joint Resolution Dissolving Defense Plant Corporation and Substituting Reconstruction Finance Corporation*, 59 Stat. 310, c. 215, June 30, 1945 (Appendix "B", p. 17);
3. *The Contract Settlement Act of* 1944, c. 358, 58 Stat. 649; 41 U. S. C. A. Section 101 *et seq.* (Appendix "B", p. 18);
4. *War Mobilization and Reconversion Act of* 1944, 58 Stat. 785, 50 U. S. C. A. Appendix, §1657 (Appendix "B", p. 23);
5. *The Reconstruction Finance Corporation Liquidation Act of* 1953, c. 282, 67 Stat. 231 (Appendix "B", p. 24);
6. *The Reconstruction Finance Corporation Act of* 1954, c. 410, 68 Stat. 320 (Appendix "B", p. 25);
7. *The Reorganization Plan No.* 1 of 1957, 22 F. R. 4633, 71 Stat. 647, 15 U. S. C. A. 1959 Supp. §601, p. 27 (Appendix "B", p. 27);
8. *California Corporations Code*, Section 5401 (Appendix "B", p. 30);
9. *Code of District of Columbia*, §29-716 [5:406], §29-931 (Appendix "B", p. 30);
10. *Wyoming Compiled Statutes*, 1945, §44-1103 (Appendix "B", p. 31).